

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION**

L & S TRAILERS & SUPPLY, LLC,

Plaintiff,

CASE NO. 1:08-cv-00232-SPM-AK

vs.

OPTIMA INDUSTRIES, LLC,

Defendant.

_____ /

ORDER DENYING PLAINTIFF'S MOTION TO STRIKE

THIS CAUSE comes for consideration upon Plaintiff's Motion to Strike (doc. 54). The jurisdiction of this court is invoked pursuant to Title 28, United States Code, Section 1346(b). The motion is hereby denied. This Court's denial of Defendant's Motion for Summary Judgment has mooted the grounds upon which Plaintiff's Motion to Strike stands (doc. 59) .

Additionally, the default judgment entered against Defendant in Alachua County was not on the merits, therefore, the axiom of *res judicata* does not apply to preclude this Court from hearing the matter. Trustmark Ins. Co. v. ESLU, Inc., 299 F.3d 1265, 1269-70 (11th Cir. 2002); quoted in Koziara v. City of Casselberry, 239 F. Supp. 2d 1245, 1254 (M.D. Fla. 2002) ("In order to establish the defense of

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res judicata . . . there must be a final judgment on the merits . . .”).

Accordingly, it is

ORDERED AND ADJUDGED:

1. Plaintiff's Motion to Strike (doc. 54) is DENIED.

DONE AND ORDERED this twenty-third day of November, 2009.

s/ Stephan P. Mickle

Stephan P. Mickle
Chief United States District Judge